

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 616 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

-----  
GIRISHKUMAR G ROHIT

Versus

STATE OF GUJARAT

-----  
Appearance:

MR GIRISH PATEL for Petitioner

MR VB GHARANIYA,AGP for State

MR DS NANAVATI WITH MR DG SHUKLA for Respdts. 2, 3

-----  
CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 17/03/98

ORAL JUDGEMENT

1. The petitioner was appointed as a Clerk in Jupiter Textile Mills Ltd. on 31st December 1978 and he was confirmed on 20th August 1980 with effect from 1st September 1980. He was transferred to another department. He did not carry out the order of transfer and he had challenged that order in the Labour Court. He had applied for leave from 2.10.1982 to 30.10.1983. However, that

leave was not granted and was rejected. The Labour Court also rejected his challenge.

2. As a result of the petitioner's long unauthorised absence, the respondent informed him that he had lost his lien on appointment. Being aggrieved thereby, the workman has filed this petition. It is contended that this termination by way of loss of lien is an adverse order having adverse consequences on him and such order could not have been passed without affording him an opportunity of hearing.

3. On behalf of the respondents, it is submitted that the Standing Orders applicable to the undertaking provide for the consequences of loss of lien if the employee fails to return on the expiry of any leave. The said Standing Order 7 reads as follows:-

"7. An employee shall lose his lien on his appointment if he fails to return on the expiry of any leave or any extension thereof which may have been granted to him. The manager may, however, restore the employee's lien on his appointment if the employee gives an explanation to the satisfaction of the company for his inability to return before the expiry of the leave."

4. In a similar case of D.K.Yadav Vs.J.M.A.Industries Ltd., (1993)3 SCC 259, the Supreme Court had an occasion to consider such unauthorised absence and similar Standing Order providing for loss of lien. In that case, the workman had absented from duty continuously for more than 8 days from December 3,1980 without leave or prior intimation or previous permission from the management and, therefore, by letter dated December 19,1980, the management informed the workman that he is deemed to have left the services of the company on his own account and he lost the lien of appointment. In support of their action, the management had placed reliance on clause 13(2)(iv) of the Certified Standing Orders, which reads as follows:-

"If a workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless

(a) he returns within 8 calendar days of the commencement of the absence of the expiry of leave originally granted or

subsequently extended as the case may be;  
and

(b) explains to the satisfaction of the manager/ management the reason of his absence or his inability to return on the expiry of the leave, as the case may be. The workman not reporting for duty within 8 calendar days as mentioned above, shall be deemed to have automatically abandoned the services and lost his lien on his appointment. His name shall be struck off from the muster-rolls in such an eventuality".

This is similar to the present Standing Order 7 which has been quoted earlier. In para 15, the Supreme Court has held that the principle of natural justice must be read into Standing Order no. 13(2)(4); otherwise, it will become arbitrary, unjust, unfair and violative of Article 14 and held that when so read, the impugned action was held to be violative of the principles of natural justice as admittedly no opportunity was given to the employee and no inquiry was held. The Supreme Court, therefore, set aside the order of termination, but held that equally the appellant should blame himself for the impugned action and awarded 50% of the back wages.

5. In the present case also, admittedly, the termination is without any opportunity to the petitioner to explain as to why such action of loss of lien should not be taken. Therefore, that action has to be set aside and the petitioner is required to be directed to be reinstated with 50% of the back wages. However, it is stated that since 31.8.1990, the petitioner is already serving with a local authority and, therefore, 50% back wages shall be payable only from the period from 8.12.1984 till 31.8.1990.

6. The learned Counsel for the respondent has submitted that back wages is a question which would require detailed consideration and evidence and such a relief cannot be granted in a writ petition without having approached the Labour Court. Reliance is placed on the judgment of the Supreme Court in the case of UP Warehousing Corporation and ors. Vs. Vijay Narayan Vajpayee, AIR 1980 SC 840 (para 18) wherein the Supreme Court has held that whether the employee has to be reinstated with or without full back wages is a question of fact depending upon the evidence to be produced before the Tribunal and the High Court was held to be in error

in directing payment of full back wages to the employee.

7. This judgment has been considered by the Division Bench of this Court in Letters Patent Appeal No. 249 of 1983 by S.B.Majmudar, the then Acting Chief Justice and S.D.Shah,J. in a judgment delivered on March 3,1992. In para 14, this UP Warehousing case is considered and it was held that awarding full or part back wages would depend upon the facts of each case and in a given case, the Court might relegate the workman to the remedies under the Industrial Disputes Act, but it is not in every case that the High Court should relegate to the remedy under the Industrial Disputes Act. In that case, the Division Bench awarded full back wages to the workman.

8. Even in the case of DK Yadav (supra), the Supreme Court had directed payment of 50% back wages in a similar circumstance. Therefore, there is no reason why in the present case, similar direction should not be issued.

9. Hence, the petition is allowed and rule is made absolute by directing that the respondent Corporation shall reinstate the petitioner with 50% of the back wages from the period from 8.12.1984 to 31.8.1990. The respondent to pay the costs of the petition.

-----

mhs/-